IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 3818 of 2006
Date of decision : 30.11.2006.

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Parties Name

Lakhwinder Singh

..... Appellant

vs.

Sita Ram Mittal and others

.....Respondents

Coram: Hon'ble Mr. Justice S.N. Aggarwal

Present: Sh. B.R. Mahajan, Advocate
for the appellant.

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S.N. Aggarwal, J.

Sita Ram Mittal-respondent no.1 was the owner of the shop bearing plot No. 38, situated in New Anaj Mandi, Hodal. He filed a suit for redemption alleging that the said shop was mortgaged by him with M/s. Sohan Lal Sita Ram for a sum of Rs.10,000/- vide registered mortgage deed dated 3.4.1989. Sohan Lal-respondent No.5 and Sita Ram father of respondents No. 2 to 4 were partners of firm M/s. Sohan Lal Sita Ram.

However, the appellant contested the case by filing a written statement. Legal objections were also pleaded. Ownership of respondent No.1 over the shop in dispute was admitted. But the execution of the mortgage deed was denied. It was also alleged that the appellant was tenant in the said shop on the monthly rent of Rs.1,000/-. Said mortgage deed was stated to be a forged document.

Issues were framed. The parties led the evidence. However, the suit was decreed by the learned trial Court vide judgment and decree dated 27.9.2004. The appeal was filed by the appellant and by respondents No. 5 to 7. The learned Lower Appellate Court upheld the findings of fact recorded by the learned trial Court and dismissed the appeal vide judgment and decree dated 18.8.2006.

Hence, the present appeal.

The submission of the learned counsel for the appellant was that he was in possession of the shop in dispute even earlier to the date of alleged mortgage deed dated 3.4.1989. In support of this submission, reference was made to the document Annexure A-4, which was an application signed by the appellant on 30.3.1989. A perusal of this document reveals that it was filed by the appellant to the Executive Officer, Market Committee, Hodal on behalf of the firm M/s. Sohan Lal Sita Ram for obtaining licence. It was stated in this application that the firm is going to start business in plot No. 38 (shop in dispute), which has been taken on mortgage by Sita Ram s/o Prabu Dayal. This document does not support the case of the appellant. Rather it shows that the shop in dispute was mortgaged by respondent No.1 in favour of respondent No.5 and father of respondent No. 2 to 4. No doubt, the mortgage deed was executed on 3.4.1989, but it appears from Annexure A-4 that the talks of mortgage between the parties were in the process on 30.3.1989 when this application was filed. Therefore, this application does not prove if the appellant was in possession of the shop in dispute as a tenant.

It was further submitted that the mortgage deed has not been

proved. The original has not been produced. The attesting witness of the mortgage deed has not been examined. This submission has also no merit. Under the provisions of Section 68 of the Indian Evidence Act, the attesting witness is to be examined only in those cases, where the execution of the document is denied by the executant. In the present case, the execution is not denied by the executant. Rather they have certified its execution. Therefore, the non-examination of the attesting witness of this document does not prove the existence of mortgage deed dated 3.4.1989. The original mortgage deed may not have been produced but admittedly it is a registered document.

Moreover, both the Courts below have recorded the finding of fact that the shop in dispute was mortgaged by respondent No.1 in favour of the firm M/s. Sohan Lal Sita Ram. Both the Courts below have also held that the appellant has not been able to prove his possession over the shop in dispute as a tenant.

No circumstance was brought to the notice of this Court to disturb the concurrent finding of fact recorded by the learned Courts below.

No substantial question of law arises.

No merits. Dismissed.

(S.N.Aggarwal)
Judge

30.11.2006.
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